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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Adalah – The Legal Center for Arab Minority Rights in Israel, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Addressing Prevailing Impunity for Israel's Violations of International Law

As independent human rights organizations working to protect the rights of Palestinian residents of the occupied Palestinian territory (oPt), we welcome the opportunity to contribute to the Human Rights Council (HRC), particularly Agenda Item 7. We are deeply concerned, and request intervention by the HRC to effectively address:

- The ongoing lack of domestic accountability in Israel for serious violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL), such as those committed in the context of repeated Israeli military operations in the oPt, particularly the Gaza Strip, but also in the occupied West Bank (including East Jerusalem);
- Israeli forces' use of excessive and intentional force without justification against Palestinian civilians in the oPt, including journalists and medical crews. Alleged cases of the deliberate fatal shooting of individuals who posed no imminent danger to life amounts to an appalling pattern of apparent systematic unlawful killings;
- Israel's prolonged military occupation of the oPt comprising many illegal aspects, including the eight-year closure/blockade of the Gaza Strip, which is the root cause of recurring violence and ongoing violations of the human rights of Palestinians;
- Israel's persistent non-cooperation with independent international investigations, including relevant UN Special Procedures and especially the Special Rapporteur on the human rights situation in the oPt, and commissions of inquiry.

Between July and the end of August 2014, 2,219 Palestinians were killed during "Operation Protective Edge" (OPE); Israel's massive military operation in the Gaza Strip. [1] Between June and August 2014, 27 Palestinians, including five children, were killed in "Operation Brother's Keeper" in the occupied West Bank, including East Jerusalem.[2]

The UN-established Commission of Inquiry (COI) found the possible commission of serious international law violations, characterized as widespread and systematic, in the course of these Israeli military operations. It concluded that impunity prevails across the board for violations of international law committed by Israeli forces, whereby Palestinian victims are systematically denied their right to effective remedies and reparations. In July 2015, the HRC adopted a resolution on ensuring accountability and justice for all violations of international law in the oPt. The resolution received overwhelming support by HRC member States, including unanimous support of EU members. The resolution called for the implementation of all the recommendations in the COI's report.

A November 2015 briefing[3] by Al Mezan Center for Human Rights in Gaza (Al Mezan) outlines that as of 31 May 2015 a total of 1,248 civil compensation notifications were filed to the compensation officer at the Israeli Defense Ministry; and that as of July 2015 a total of 354 criminal complaints were submitted to the Military Advocate General (MAG) and the Israeli Attorney General.

However, the vast majority of these civil and criminal complaints remain unanswered or have already been closed, indicating that, as in the past, the perpetrators will not be held accountable for serious IHL and IHRL violations against Palestinians.[4] The case of the four Bakr children killed on Gaza beach was opened for an investigation, but was quickly

[1] Coalition comprised of Al Mezan, Al-Haq, Palestinian Center for Human Rights, and Al Dameer Association for Human Rights – Gaza, who carried out monitoring and documentation during OPE.

[2] See OCHA, Humanitarian Bulletin Monthly Report June – August 2014, p.3: http://www.ochaoPt.org/documents/ocha_oPt_the_humanitarian_monitor_2014_10_03_english.pdf.

[3] Briefing on Israeli investigations into criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014. It is available here: http://mezan.org/en/uploads/upload_center/kiWkMhPrYIZx.pdf

[4] For details about the status of the complaints filed by Adalah and Al-Mezan, see Adalah's Report to: The United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict, 31

closed in June 2015, without interviewing key witnesses.[5] The case of Israel's attacks on Mebarat Palestine that killed two people with disability, injured others, and destroyed the center, was also promptly closed without a criminal investigation.

The long-standing significant concerns about Israel's investigatory mechanisms, and the lack of will to effectively remedy it, are underscored by the August 2015 report of the government-appointed Ciechanover Commission. The mandate of this Commission was to recommend practical steps towards implementing the recommendations of the Turkel Commission. However, it refrained from advocating for the adoption of domestic legislation defining the offenses of war crimes, including liability for command responsibility, in a manner that conforms with international law. The substance of its report has cemented our very significant concerns relating to the basic issue of genuineness of national proceedings in Israel concerning alleged laws of war violations, due to, a) the absence of an adequate legislative framework for investigations and prosecutions, b) the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible, and c) more general issues relating to the "dual role" of the MAG and a lack of political will.

In addition, domestic Israeli investigations continue in practice to deviate substantially from international law requirements, including:

- Lack of an independent investigatory mechanism (independence/impartiality): The Israeli military's newly established Fact-Finding Assessment Mechanism (FFAM) belongs to and is under the authority of the military, and is still within the hierarchy and internal organization of the army;
- The MAG fosters an incorrect and extremely concerning interpretation of the IHL principles of proportionality, distinction, and precaution, which led, during OPE, to thousands of civilian casualties, and to the widespread destruction and damage of civilian objects, including an enormous number of family homes;
- Lack of a time frame for examinations and investigations and long delays in responding to complaints (promptness);
- Unwillingness of the MAG to disclose information on witnesses and testimonies, and other evidence (transparency): In many responses, the MAG emphasized that all investigative material is classified or "secret," including the identity of the witnesses, which raises suspicion regarding the reliability of the evidence; and
- Unclear circumstances under which the MAG will open an investigation.

Palestinians, in particular residents of the Gaza Strip, also face severe barriers to access redress in Israel. Due to the severe restrictions of movement imposed by Israel's eight-year blockade of the Gaza Strip, which limit exit permits to exceptional and urgent humanitarian cases, Palestinians are denied the right to appear at hearings in cases against the Israeli military, which leads to their cases being dismissed. In addition Israel also imposes numerous barriers such as a

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January 2015, pp 14-16: http://www.adalah.org/uploads/Adalah-Submission-UN-COI-Gaza-2015.pdf and the updated status of complaints list, January 2016: http://www.adalah.org/uploads/Adalah-Gaza-Case-List-Updated-20-Jan-2016.pdf; and see Al Mezan's BRIEFING UPDATE: 15 November 2015 Israel's investigations on criminal complaints submitted by Palestinian NGOs in Gaza on behalf of victims of attacks on Gaza in July and August 2014

[5] See *Al Mezan & Adalah: "Israeli investigation system is fundamentally flawed. The army cannot investigate itself."* Available at http://www.mezan.org/en/post/20956.

shorter statute of limitations[6] and high financial guarantees[7] that essentially prevent Palestinians from Gaza from receiving civil remedies and compensation for their injuries by the military from Israeli courts.[8] [9]

The lack of accountability in Israel for its repeated severe violations of IHL and IHRL fosters a culture of impunity that ensures the repetition of its devastating military assaults, and the continuation of its prolonged occupation of the oPt. Further, Israel's refusal to cooperate with independent international mechanisms, such as the COI, has profound implications for the protection of human rights worldwide. Accordingly, we call on the HRC and members states to:

1. Condemn Israel's persistent non-cooperation with UN Mechanisms, including Special Procedures;
2. Insist that Israeli forces' apparently excessive and intentional use of force against Palestinian civilians in the oPt is subject to independent and credible criminal investigations;
3. Demand that Israel immediately lift the closure/blockade of the Gaza Strip and cease collective punishment of Palestinians in the oPt, including East Jerusalem;
4. Reiterate that Israeli violations of IHL and IHRL are rooted in Israel's prolonged military occupation of the oPt, the inherently discriminatory features of which thwart the pursuit of justice for Palestinian victims.
5. Demand that Israel remove all barriers for Palestinians to access Israeli courts to pursue civil claims against the Israeli military's unlawful actions that include killings and damages;
6. Conclude that, to date, Israeli domestic investigations demonstrate an unwillingness and inability to genuinely carry out investigations or prosecutions in compliance with international standards;
7. Urge the High Commissioner to conduct a comprehensive review of the implementation of the COI-Gaza report's recommendations and to suggest possible mechanisms that could be established to ensure their implementation, including the consequences of non-compliance with international law and the report's recommendations and to present a report therein to the Council at its next session.

Al Mezan Centre for Human Rights and Lawyers for Palestinian Human Rights, NGOs without consultative status, also share the views expressed in this statement.

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[6] Section 5a(c) of the Civil Wrongs Law shortens the statute of limitations from seven to two years in lawsuits submitted against the state concerning actions of the security forces.

[7] The average sum of the guarantee is NIS 30,000 (EUR 6,730).

[8] For examples of cases dismissed because of Israel's policy of denying entry, see Adalah COI, pp 23-26.

[9] In December 2014, the Supreme Court contradicted a 2006 decision and upheld the onerous regulations, effectively closing the doors of the Israeli courts to Palestinian residents from Gaza for their civil compensation claims, which thereby also constitutes a serious breach of Israel's obligations under IL.